

**Keydata Systems, Inc. and United Mine Workers of America.** Case 9-CA-30895

February 8, 1994

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND TRUESDALE

On August 13 and November 24, 1993, the Acting General Counsel of the National Labor Relations Board issued a complaint and amended complaint, respectively, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 9-RC-16189. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed answers admitting in part and denying in part the allegations in the complaint and amended complaint.

On December 8, 1993, the Acting General Counsel filed a Motion for Summary Judgment. On December 14, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to recognize and bargain with the Union as the exclusive collective-bargaining representative, but attacks the validity of the certification on the grounds that the Board inappropriately asserted jurisdiction over the Respondent and issued the certification in an inappropriate unit.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.<sup>1</sup> We therefore find that the Respondent has

<sup>1</sup> By Order dated June 1, 1993, the Board (Member Devaney dissenting) denied the Respondent's request for review of the Regional Director's Decision and Direction of Election. Subsequently, on November 22, 1993, the Respondent filed a motion to reopen the representation case record to receive newly discovered and previously unavailable evidence on the jurisdictional issue. Having duly considered the Respondent's motion, we find it without merit. The only new evidence cited by the Respondent consists of certain actions by the Respondent's principal client, the Internal Revenue Service (IRS), during a strike which occurred between September 10 and October 29, 1993, following the Union's June 10, 1993 certification. Such actions allegedly included: (1) insisting that the Respondent timely complete all work during the strike, and that it do so without transferring any work from the subject Beckley, West Virginia facility to any other facility; (2) subsequently issuing a "stop work"

not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation, has been engaged in providing data entry services to other enterprises and governmental agencies from its Beckley, West Virginia facility. During the 12-month period ending May 31, 1993, the Respondent, in conducting its operations, performed services valued in excess of \$50,000 for the Internal Revenue Service, an agency of the United States Government.

During this same period of time, the Respondent purchased goods and materials valued in excess of \$10,000 from firms located outside the State of West Virginia which were shipped directly to its West Virginia facility. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held June 1, 1993, the Union was certified on June 10, 1993, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time data entry operators and document control clerks, including lead operators, employed by the Employer at its Beckley, West Virginia facility, but excluding the administrative assistant, quality control specialist, computer operator, and all professional employees, guards and supervisors as defined in the Act.

order when violence allegedly erupted against the temporary replacements hired by the Respondent; and (3) thereafter lifting the stop work order and ordering the Respondent to complete work by a stated time subject to cancellation of the contract. In agreement with the Union, we find that, even if proven, none of these alleged events would warrant reconsideration of the Board's finding of jurisdiction in the representation proceeding. As indicated by the Union, the fact that the IRS imposed extensive security and other operational requirements and restrictions on the Respondent and could cancel its contract with the Respondent if any backlog occurred during a concerted refusal to work was fully considered by the Board in that proceeding. Thus, while it is true that the alleged events outlined above occurred after the Board's certification of the Union, they in fact raise no issue which was not, in principle, considered by the Board in the representation proceeding. Accordingly, the Respondent's motion to reopen the representation proceeding is denied.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. Refusal to Bargain

Since June 24, 1993, the Union has requested the Respondent to bargain, and, since June 28, 1993, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

### CONCLUSION OF LAW

By refusing on and after June 28, 1993, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

### ORDER

The National Labor Relations Board orders that the Respondent, Keydata Systems, Inc., Beckley, West Virginia, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Refusing to bargain with United Mine Workers of America as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time data entry operators and document control clerks, including

lead operators, employed by the Employer at its Beckley, West Virginia facility, but excluding the administrative assistant, quality control specialist, computer operator, and all professional employees, guards and supervisors as defined in the Act.

(b) Post at its facility in Beckley, West Virginia, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 9 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER DEVANEY, dissenting.

In the underlying representation proceeding, I dissented from the Board's denial of the Employer's request for review of the Regional Director's decision asserting jurisdiction over the Employer. I therefore dissent from my colleagues' finding here that the Employer has violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union.

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Mine Workers of America as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time data entry operators and document control clerks, including

lead operators, employed by us at our Beckley, West Virginia facility, but excluding the administrative assistant, quality control specialist, com-

puter operator, and all professional employees, guards and supervisors as defined in the Act.

KEYDATA SYSTEMS, INC.